11 March 2024

Martin Bryant (APRA MEMBER) Re APRAs application for extension of monopoly.

Please accept this submission from myself, Martin Bryant, in my capacity as a writer member of APRA.

It is my strong belief that APRA and its trading entity, ONE MUSIC, should not be allowed to continue to operate a Monopoly in New Zealand or Australia. I will provide examples of why this is my position.

I write from the perspective of a self-funding songwriter and recording artist who was previously a member of both RMNZ (NZ's PPCA equivalent) and APRA AMCOS. I am 37 years old and have been a member of APRA since 2013.

EXAMPLE 1

It is common knowledge that music rights are broken down into two main rights. Recording rights, and Composition and Lyric rights. Both are needed to play a recording publicly in a commercial setting.

In 2020 I cancelled my membership with RMNZ (the NZ equivalent of PPCA) and continued my membership with APRA. I did this due to a desire to license my recording rights directly to music users who were using my songs in their businesses. During this time my songs charted in the NZ TOP 40 and received regular airplay and plays by many businesses.

Due to the set up of my rights , this meant that when my song was played in public the composition and lyrics rights would still be collected by APRA, and I would retain the right to set and collect a license fee for public communication of my recordings. This seemed like a simple approach that would allow me to make better deals for me to be able to sustain my art.

Numerous times, I heard my own songs playing in public and I approached those businesses directly explaining to them my music was not fully covered by a ONE MUSIC license and asked them if we could make a direct licensing arrangement for my rights.

These music users included, but are not limited to, X confidential, X confidential, X confidential , X confidential. The response I received was very disappointing.

Every single music user that I approached responded to me believing they had already paid a license for my music through paying ONE MUSIC.

After explaining that this was not the case since 2020, the music users told me that they would remove my music from their systems if I insisted that they would need to license the music from me.

Upon approaching ONE MUSIC (APRA and RMNZ) in writing to tell them about the issues, I was ignored for several months. I had hoped that they would help me resolve the issue. When they finally did respond they immediately jumped to the defence of the music users, stopped picking up my calls and ignored my emails.

The situation has resulted in my music being removed from many public playlists which has being highly detrimental to my career.

The ACCC regulations require that APRA due to it's monopoly would help facilitate a "licensing back" in the instance where I would want to license my rights directly.

It is therefore clear to me that the licensing back initiative does not work in practice. It is also clear to me that ONE music, APRA, makes claims to appear on paper like licensing back is an option, but in reality, it is not.

EXAMPLE 2

It is also clear that ONE MUSIC uses complication and stalling techniques to avoid being held accountable in any way. Upon approaching The NZ Copyright Tribunal for support dealing with my issue I found that the tribunal had never dealt with this type of issue before (i.e a complaint by a member against a collection society). The last matter that had gone through the Tribunal was between a collection society against a music user and was over 7 years ago. The Tribunal had no staff that knew how to progress a complaint. As such I waited and waited and eventually withdrew 2 months later due to no update being provided to me about my complaint and what would be the next steps procedurally. I essentially lost faith that the matter was being dealt with at all.

Again the ACCC regulations allowing the monopoly of APRA list the Copyright Tribunal as a counter balance to keep the monopoly in check and to support creatives where required. My experience it is absolutely not an effective counterbalance and has little to no use. I believe ONE MUSIC NZ knows full well that this tribunal barely exists in NZ and they use this to never be held accountable by members that have grievances with them.

The ACCC regulations also require a dispute resolution service to be paid for by APRA. I can also say that the resolution pathways channel is not available to NZ members and that when I have tried to use this channel, APRA have refused to use it saying that it is not part of the NZ jurisdiction. Despite this, the resolution channel is advertised on the NZ website as a dispute resolution option for all APRA members. It is simply “working of the system” to appear on paper like they are meeting the ACCC standards but in reality this is not available.

EXAMPLE 3

ONE MUSIC misleads songwriters and recording artists while joining into the system by representing to the artist that they can still go direct to the music user. They advertise that on the recording side (PPCA or RMNZ), that the contracts are “non exclusive”, and therefore give the artist room to make its own deals. Again similar to the licensing back function, this has very little ability to be used in reality. Because APRA already have contracts in place with music users, an artist is hard pressed to find a music user who has not already paid a blanket license which includes the artists music. This means the artist signs up believing that they still will be able to negotiate deals directly with the music users but in reality this is not possible, or if it is, it is a rare circumstance.

EXAMPLE 4

ONE MUSIC contracts indemnify music users who are paying ONE MUSIC license fee's for any copyright issues that arise. This creates a conflict of interest. APRAs role is to advocate

for the rights of the artist, but on the other hand, it indemnifies the music users against any potential copyright breaches. This can't possibly serve the members copyright interests as if they do have a right to enforce that copyright, the membership organization who is supposedly protecting them has indemnified the music user.

EXAMPLE 5

ONE MUSIC advertises that they represent essentially all, or virtually all commercially released music. This is all over their website and is absolutely not true. There are hundreds of thousands of independent artists who have not agreed to the ONE MUSIC terms and conditions. Such an advertisement is a breach of the Commerce Act and Fair Trading regulations. This is misleading to the public, it deceives the music user who is paying a license believing that they are covered for everything when this isn't true. But most importantly, it presumes APRA have creative rights that they do not have.

APRAs long term approach has been to collect royalties regardless of whether the artist signs thier membership or not. They keep these royalties as “placeholder” and distribute them to the writer if the writer decides to join. This undermines the writers ability to set a fee for the public
use of thier own work. Work that they paid for and created. It imposes the license fee rates APRA has set on the artist.
As it stands the artist can either sign with APRA, whose contracts are non negotiable, (standard form). Or accept that we will get paid nothing because approaching the music user will result in them saying that they have already paid thier license. This set up, which is the current status quo in both AU and NZ means that an artist in a remote log cabin creating his own original music recordings, who has never heard of APRA, is never the less subject to APRAs terms and conditions. It is completely errososive of fundamental copyright laws.

Since 2020 I have not received any of my recording royalties which were paid by music users to ONE MUSIC. My attempt negotiate with those users was not met with license back facilitation by APRA (ass the ACCC regulations require, but rather by resistance.

My self self funded songs charted in the Top 40 two years ago and as of 11 March 2024 I still have not been paid for them due to this extensive breach by ONE MUSIC of the ACCC regulations.

EXAMPLE 6

I personally have had my songs on Spotify since 2014. On that platform I have had around 400,000 online streams of my original self funded songs. On one occasion I asked a staff representative at Spotify Australia if I could license my music directly to the Spotify platform so that I could set a fair fee for the use of my songs. I was told by that staff member that Spotify had already paid a license to play my songs to APRA.

I had been receiving around 0.003 per stream. As such I canceled my membership with APRA and re approached Spotify directly to say that I now fully owned my rights and that I would like to negotiate a license fee with them directly. Spotify at first seemed to be considering this, and asked for all of the names of my songs. However two weeks later I received an email from Spotify which said that if I did not rejoin APRA by christmas my entire music catalog would be removed from Spotify. As such I was forced to rejoin APRA at fear my entire catalog would be removed.

EXAMPLE 7

When a writer is signing up to become a member of APRA, the input agreement to join APRA is completely non negotiable. The forms are online tick box and are take it or leave it agreements. Upon trying to negotiate with APRA I have communications from senior APRA staff who confirm
that thier contracts are fully non negotiable. In my experience even very reasonable requests such as asking for APRA to consult me on deals they made for my music was met with refusal.

Despite this APRAs contracts require the songwriter to assign **all past and future works to them for the entire world.** This strips the artist of any ability to reap fair rewards of the use of their music.

There is no part of the agreement where a songwriter can negotiate a fair license fee with APRA for the public use of thier songs. There is no protection of a fair or reasonable income for the writer. This means the artist simply has to accept APRAs terms and conditions to be able to access the market.

EXAMPLE 8

There is a government agency called NZ ON Air that provides funding grants for the costs of making original songs in NZ. This is one of the only places in NZ for artists to receive funding support for music. Senior members of APRA staff are regularly on the judging panel who allocate which artists receive funding. This means if an artist has complained against the APRA system, they also run the risk of losing external funding opportunities.

CHANGES

APRAS constitution needs to be fundamentally changed. Its constitution requires the company strive to represent more and more music repertoire so that it will always have market dominance. This results in an unsustainable system representing so many members that they cannot possibly serve any of them fairly. There must be a cap on the membership numbers so that a competing organization can grow.

The only real beneficiary of the APRA system is the executive staff who take a fixed percentage cut each year. They therefore enjoy a certainty of income while writer members are often receiving fractions of cent payments.

There needs to be an investigation into how writers members can actually utilize their rights if they choose to license back or license directly to the music user. There needs to be methods in place to ensure that when utilizing this function, the writer is not prejudiced. If the writer is able to negotiate a fee directly with the music user, APRA should reduce their fee accordingly.

There need to be methods to ensure the counter balances on the monopoly (licensing back, copyright tribunal, actually work in practice, not just on paper, and that they are easily accessible at little to no cost to the creator.

Allowing this monopoly I believe has created a lazy state of affairs and a slow decline of standards in the royalty collection space. It has created a lack of innovation and competition around how royalties are collected and an entitlement from music users that they can play anything.

Allowing competition in the market will allow creators to shop around where they want to give their rights to and will eliminate take it or leave it type contracts. It will allow for the

potential emergence of competing rights collection societies that can offer better and more sustainable rates to businesses, and to musicians.

The prospect of music users needing to pay slightly more, or more than one license, is not a major detriment. Local musicians will be able to rally together to offer "support local licenses" which will get royalties into the hands of local artists and increase exposure and incentives for businesses to play music from artists that live in their immediate community.

The ACCC allowing APRA to run a monopoly is preventing this outcome from happening. Independent artists simply cannot compete, and if they do try to compete, they are thwarted out of the rights to their music. It is too risky for any creator to push against the system at the risk of doing so, as I have experienced results in my music being removed from public.

Collection societies have become the bully they were set up to prevent. They were never intended to be the only way for artists to receive their royalties. They were intended to be an option for artists to collectively benefit by a group mentality. They have certainly become something that is now detrimental to this purpose. The dilution of the royalty across hundreds of thousands of members has become "Bulk Buying" at the expense of the individual creator, rather than a collective model where all boats rise when the tide is high.

We need this system to be broken down to serve the interest of the many subgroups that now exist within the membership and to meet the needs of the rise of independent self funding creators.

I trust these examples demonstrate the issues from an important perspective and will assist the ACCC in making a decision on whether to allow the monopoly to continue.

I would be happy to consult with you in more detail on the matters I have raised at your

request. Many thanks,

Martin Bryant
APRA Member